

UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451

DUNN
Mailed: January 5, 2005

Opposition No. 91163125

FOODPHONE, LLC

v.

VERONICA G. HEGEMAN

Elizabeth A. Dunn, Attorney:

On October 28, 2004, Foodphone, LLC filed a notice of opposition which referred to ten exhibits.

The Board's electronic file includes the four page notice of opposition, and 17 scanned pages which are not marked as exhibits, which are not separately titled or otherwise identified, which are not always complete, and which do not comport with the exhibits listed in the pleading. These deficient pages were forwarded to applicant with the Board's November 26, 2004 institution and trial order.¹

The Board has been unable to locate the original filing to correct what may have been scanning errors. Accordingly, while the Board regrets the inconvenience to opposer, opposer is ordered to provide two copies of the ten exhibits attached to the notice of opposition, with each exhibit separately

¹ The delay in acting upon this matter is regretted.

numbered, within 20 days of the mailing date on this order.

Opposer must serve applicant with one copy of the exhibits, and must file the second copy with the Board.²

Applicant is allowed until forty days from the mailing date of this order to file an answer to the notice of opposition.

Applicant appears to be acting without counsel in this proceeding. It should be noted that while Patent and Trademark Rule 10.14 permits any person to represent itself, it is generally advisable for a person who is not acquainted with the technicalities of the procedural and substantive law involved in an opposition proceeding to secure the services of an attorney who is familiar with such matters. The Patent and Trademark Office cannot aid in the selection of an attorney.

Applicant's answer must comply with Rule 8(b) of the Federal Rules of Civil Procedure, made applicable this proceeding by Trademark Rule 2.116(a). Fed. R. Civ. P. 8(b) provides, in part:

A party shall state in short and plain terms the party's defenses to each claim asserted and shall admit or deny the averments upon which the adverse party relies. If a party is without knowledge or information sufficient to form a belief as to the truth of an averment, the party shall so state and this has the effect of a denial. Denials shall fairly meet the substance of the averments

² The parties are advised that "Except as provided in paragraph (d)(1) of this section [relating to copies of pleaded registrations], an exhibit attached to a pleading is not evidence on behalf of the party to whose pleading the exhibit is attached unless identified and introduced in evidence as an exhibit during the period for the taking of testimony." Trademark Rule 2.122(c).

denied. When a pleader intends in good faith to deny only a part or a qualification of an averment, the pleader shall specify so much of it as is true and material and shall deny only the remainder.

The notice of opposition filed by opposer herein consists of 23 paragraphs setting forth the basis of opposer's claim of damage. In accordance with Fed. R. Civ. P. 8(b) it is incumbent on applicant to answer the notice of opposition by admitting or denying the allegations contained in each paragraph. If applicant is without sufficient knowledge or information on which to form a belief as to the truth of any one of the allegations, it should so state and this will have the effect of a denial.

Trademark Rules 2.119(a) and (b) require that every paper filed in the Patent and Trademark Office in a proceeding before the Board must be served upon the attorney for the other party, or on the party if there is no attorney, and proof of such service must be made before the paper will be considered by the Board. Consequently, copies of all papers which applicant may subsequently file in this proceeding, including its answer to the notice of opposition, must be accompanied by a signed statement indicating the date and manner in which such service was made.³ The statement, whether attached to or appearing on

³This written statement should take the form of a "certificate of service" and should read as follows: The undersigned hereby certifies that a true and correct copy of the foregoing [insert title of document] was served upon opposer by forwarding said

copy, via first class mail, postage prepaid to: [insert name and address]. The certificate of service must be signed and dated.

the paper when filed, will be accepted as prima facie proof of service.

Applicant is advised that a paper filed in a proceeding before the Board should bear at its top the heading "IN THE UNITED STATES PATENT AND TRADEMARK OFFICE BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD," followed by the name and number of the inter partes proceeding to which it relates. U. S. Patent and Trademark Office Rule §1.5(c). Every paper filed in an inter partes proceeding before the Board, must be personally signed by the party filing it, or by the party's attorney or other authorized representative, as appropriate. See U. S. Patent and Trademark Office Rule §§1.4(d); 2.119(e); and 10.18(a).

Because the Board is an administrative tribunal, its rules and procedures necessarily differ in some respects from those prevailing in the Federal district courts. The Board does not preside at the taking of testimony. Rather, all testimony is taken out of the presence of the Board, and the written transcripts thereof, together with any exhibits thereto, are then submitted to the Board. No paper, document, exhibit, etc. will be considered as evidence in the case unless it has been introduced in evidence in accordance with the applicable rules. See Trademark Rule 2.123(1), and TBMP §717.

Strict compliance with the Trademark Rules of Practice, and where applicable the Federal Rules of Civil Procedure, is

expected of all parties before the Board, whether or not they are represented by counsel.

If applicant continues to act *pro se*, it is recommended that applicant become familiar with (i) the Trademark Rules of Practice, and (ii) the Trademark Trial and Appeal Board Manual of Procedure, both of which are available from the U. S. Patent and Trademark Office website, www.uspto.gov.

Discovery is open, and discovery and trial periods remain as set in the Board's November 26, 2004 order.

E-Government Initiatives at the Trademark Trial and Appeal Board:

TTAB forms for electronic filing are now available at <http://estta.uspto.gov>.
Images of TTAB proceeding files can be viewed using TTABVUE at <http://ttabvue.uspto.gov>.

Changes:

Parties should also be aware of changes in the rules affecting trademark matters, including rules of practice before the TTAB. See Rules of Practice for Trademark-Related Filings Under the Madrid Protocol Implementation Act, 68 Fed. R. 55,748 (September 26, 2003) (effective November 2, 2003) Reorganization of Correspondence and Other Provisions, 68 Fed. Reg. 48,286 (August 13, 2003) (effective September 12, 2003). Notices concerning the rules changes are available at www.uspto.gov.